

CLERK'S COPY

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1944

No. 70

MITSUYE ENDO

vs.

**MILTON EISENHOWER, DIRECTOR OF WAR RELO-
CATION AUTHORITY AND WARTIME CIVILIAN
CONTROL ADMINISTRATION**

**ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE NINTH CIRCUIT**

FILED APRIL 25, 1944.

No. 10605

United States
Circuit Court of Appeals
For the Ninth Circuit.

MITSUYE ENDO,

Appellant,

VS.

**MILTON EISENHOWER, Director of War Re-
location Authority and Wartime Civilian Con-
trol Administration,**

Appellee.

Transcript of Record

**Upon Appeal from the District Court of the United States
for the Northern District of California,
Southern Division**

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the District Court of the United States in and
for the Northern District of California, South—
ern Division

23688-S

In the Matter of the Application of

MITSUYE ENDO

For a Writ of Habeas Corpus

**PETITION FOR A WRIT OF HABEAS
CORPUS**

To the Honorable, the District Court of the United
State of the Northern District of California

The Petition of Mitsuye Endo respectfully shows:

I.

That your petitioner was born on the 10th day of
May, 1920, in the city of Sacramento, County of
Sacramento, State of California, United States of
America.

II.

That at the time of her birth and ever since said
petitioner has been and now is subject to the ju-
risdiction of the United States of America and of
no other country.

III.

That at all times said petitioner has been and
now is a loyal citizen of the United States of
America, and owes allegiance to and is a citizen
of no other country. [1*]

IV.

That Kunio Endo, the brother of your petitioner, is at the present time a soldier in the military forces of the United States of America.

V.

That at the present time your petitioner is confined in a certain concentration camp known as Newell, located in Modoc County, State of California and within the jurisdiction of this Court.

VI.

That your petitioner is confined in said concentration camp under armed guard, and is detained there against her will.

VII.

That by reason of said detention, said petitioner is deprived of her liberty.

VIII.

That your petitioner is informed and believes and therefore alleges that she is confined, detained and imprisoned in said concentration camp known as Newell, by Milton Eisenhower, the director of the War Relocation Authority and the director of the Wartime Civilian Control Administration; that your petitioner is informed and believes and therefore alleges that said confinement and said imprisonment is maintained by and in accordance with the orders of J. L. Dewitt, Lieutenant-General, United States Army, Commanding military area, number One, and Colonel Carl. R. Bendetsen, Assistant

Chief-of-Staff, Western Defense Command, Fourth Army, and officer in charge of the evacuation under the Wartime Civil Control Administration and E. R. Fryer, Regional Director of the War Relocation Authority and C. E. Rachford, Camp Director of the War Relocation Authority and in charge of Camp Newell in Modoc County in the State of California. [2]

IX.

That your petitioner is informed and believes and therefore alleges that said concentration camp known as Newell is under the joint command, management and control of said War Relocation Authority and the officers and members thereof, and said Wartime Civilian Control Administration, and the officers, members and directors thereof and the persons heretofore named.

X.

That your petitioner is informed and believes and therefore alleges that the sole reason for detention of said petitioner is that she is an American citizen of Japanese ancestry.

XI.

That your petitioner has been so imprisoned without any process or color of law whatsoever, that none such is pretended by those detaining her; that your petitioner alleges that no warrant or process of any court, magistrate, or other person having legal authority to issue the same exists to justify said arrest and imprisonment, but to the contrary,

the imprisonment as above stated has been without color of law and in violation of the constitution and the laws of the United States of America of which she is a citizen; that no charge has ever been made against said petitioner; that petitioner has never been informed of any other reason for which she is being held; that no hearing has ever been granted to said petitioner.

XII.

That said petitioner is not, and never has been a member of the military forces of the United States and is not subject to military law.

(1) that martial law has not been declared;

(2) that all courts in and of the State of California [3] are open and sitting and available to any party charging petitioner with crime or wrong doing.

XIII.

That said petitioner in October, 1941, became a probationary Civil Service employee of the State of California; that thereafter for a period of six months during said probationary period the officials of the State of California investigated petitioner's qualifications for her position as a Civil Service Employee and investigated her efficiency and fitness and moral responsibility.

XIV.

That thereafter said officials certified said petitioner as a permanent Civil Service Employee, and said petitioner retained said position and classification until on or about the 7th day of April, 1942.

XV.

That on or about the 7th day of April, 1942 the Personnel Board of the State of California suspended your petitioner from her position as a Civil Service Employee of said State of California and gave as one of the reasons for said suspension that your petitioner was subject to being evacuated and consequently would be unable to perform the duties of her position.

XVI.

That thereafter said Personnel Board filed supplementary charges against your petitioner and stated that said petitioner had been evacuated and was confined and detained and was unavailable to perform her duties as a Civil Service Employee; that unless your petitioner is able to establish that she is not subject to said detention the Civil Service standing of said petitioner will be imperiled; that said Civil Service standing constitutes and is a vested property right. That the acts of [4] said parties named in confining petitions will result in the deprivation of said property.

XVII.

That each of said persons now detaining said petitioner at said War Relocation Center known as Newell, located in Modoc County, State of California, professes to act under the color of and by the authority of the United States.

XVIII.

That no other application for a Writ of Habeas Corpus in this matter, on the grounds and facts

herein asserted, has been made to this or any other court by Petitioner, or any one on her behalf.

Wherefore, your Petitioner prays:

That a Writ of Habeas Corpus issue out of, and under the seal of the above entitled Court, directed to said J. L. Dewitt, Lieutenant-General, United States Army, Commanding military area, number One, and Colonel Carl R. Bendetsen, Assistant Chief-of-Staff, Western Defense Command, Fourth Army, and officer in charge of the evacuation under the Wartime Civil Control Administration and E. R. Fryer, Regional Director of the War Relocation Authority and C. E. Rachford, Camp Director of the War Relocation Authority and in charge of Camp Newell in Modoc County in the State of California, and the servants, agents, employees and subordinates of each of said parties, commanding them and each of them to produce the body of petitioner before the above entitled court on a day to be specified in said writ and before the Honorable A. F. St. Sure, judge thereof, with the cause, if any they may have for her arrest and detention, and that your petitioner be discharged and restored to liberty and bring with them this said writ.

MITSUYE ENDO,

Petitioner.

JAMES C. PURCELL,

Attorney. [5].

United States of America,

State of California,

County of Modoc—ss.

Mitsuye Endo, being first duly sworn, deposes and says:

That she is the Petitioner named in the foregoing Petition; that she has read the foregoing Petition and knows the contents thereof, that the same is true of her own knowledge except those matters therein stated on information and belief, and as to such matters she believes it to be true.

MITSUYE ENDO,

Petitioner.

Subscribed and sworn to before me this _____ day of _____, 1942.

Notary Public in and for the City of _____,

County of Modoc, State of California. [6]

State of California,

City and County of San Francisco—ss.

James C. Purcell, being first duly sworn, deposes and says:

That he is an attorney at law, admitted to practice in all of the Courts of the State of California, and in the District Court of the United States in and for the Northern District of California, Southern Division:

That prior hereto, one Mitsuye Endo retained James C. Purcell as her attorney, and requested said James C. Purcell to file for her a petition for writ of Habeas Corpus, setting forth that said

Mitsuye Endo is now illegally confined in a certain camp known as Newell, located in Modoc County, State of California, in accordance with the orders of J. L. DeWitt, Lieutenant-General, United States Army, Commanding military area, number One, and Colonel Carl R. Bendetsen, Assistant Chief-of-Staff, Western Defense Command, Fourth Army, and officer in charge of the evacuation under the Wartime Civil Control Administration and E. R. Fryer, Regional Director of the War Relocation Authority and C. E. Rachford, Camp Director of the War Relocation Authority and in charge of Camp Newell in Modoc County in the State of California:

That prior hereto, in accordance with the instructions of said Mitsuye Endo, your affiant prepared a petition for writ of Habeas Corpus, the original of which accompanies this affidavit and which is referred to and incorporated herein by reference thereto as though the same were herein specifically set forth;

That your affiant mailed said original petition for writ of habeas corpus to said Mitsuye Endo at Camp Newell, Tule Lake, Modoc County, State of California, with the request that said Mitsuye Endo sign said petition and sign the verification thereto before a Notary Public; [7]

That thereafter your affiant received a letter from said Mitsuye Endo informing your affiant that she was unable to have said signature notarized by a notary public, by reason of the fact that the two (2) notary publics in said Camp were notary pub-

lies in, and for the County of Sacramento, and were not authorized to administer oaths in the County of Modoc;

That your affiant knows the signature of said Mitsuye Endo and said signature appearing upon said petition and the verification thereof is the signature of Mitsuye Endo, the petitioner named therein;

That the law offices of your affiant are maintained in the City and County of San Francisco, State of California; that said Mitsuye Endo, your affiant's client, is at the present time outside of the City and County of San Francisco, and as heretofore stated is confined in a camp in Modoc county, State of California; that your affiant is informed and believes and therefore alleges that each, every, and all of said allegations contained in said Petition are true.

JAMES C. PURCELL.

Subscribed and sworn to before me this 13th day of July, 1942.

[Seal]

MARION M. BENDER,

Notary Public in and for the City and County of San Francisco, State of California.

My Commission Expires November 20, 1943.

[Endorsed]: Filed Jul. 13, 1943. [8]

[Title of District Court and Cause.]

AFFIDAVIT OF ELMER L. SHIRRELL

State of California.

County of Modoc—ss.

Elmer L. Shirrell, being first duly sworn on oath, deposes and says that at all times material to this action he was, and is, an employee of the War Relocation Authority and the duly appointed, qualified and acting Project Director of the Tule Lake War Relocation Center located at Newell, Modoc County, California:

That the petitioner, Mitsuye Endo, is a person of Japanese ancestry and was removed to said Tule Lake War Relocation Center pursuant to the authority of Executive Order No. 9066 promulgated by the President of the United States of America on February 19, 1942, and pursuant to the Public Proclamation of Lieutenant General J. L. DeWitt, Commanding General of the Western Defense Command and Fourth Army, promulgated pursuant to and under authority of Executive Order No. 9066; and that said petitioner at all times material to this action has been, and now is, residing within said Tule Lake War Relocation Center.

That the Director of the War Relocation Authority has issued regulations providing that persons residing in Relocation Centers might apply for leave to depart from said Relocation Centers, which include the said Tule Lake War Relocation Center.

That said regulations provide for the following types of leave:

(a) A short term leave, for not more than thirty days, for attending to affairs requiring the applicant's presence outside the relocation area; [9]

(b) A leave to participate in a work group, for employment and residence with a group of center residents outside the relocation area, or for such employment with residence remaining within the relocation area; and

(c) An indefinite leave, for employment, education or indefinite residence outside the relocation area.

Said regulations further provide that any person residing within a Relocation Center may apply for leave:

That in every case of an application for leave the Project Director of the Relocation Center where the applicant resides is required, by said regulations, to review such application; and that the affiant does personally review every application for leave made by persons residing at the said Tule Lake War Relocation Center.

That said regulations promulgated by the Director of the War Relocation Authority in Washington, D. C., on September 26, 1942 were filed with the Federal Register on September 28, 1942 and were published in the Federal Register on September 29, 1942, on pages 7656-7658 inclusive; and that by reason of such publication affiant is informed and believes the petitioner, Mitsuye Endo, had constructive notice of the existence of said regulations and the contents thereof.

That a digest of the contents of said regulations was published in the "Daily Tulean Dispatch", a newspaper of general circulation within the limits of the said Tule Lake War Relocation Center, on October 14, 1942; and that on information and belief the contents of said regulations are a matter of common knowledge among the persons residing within the said Tule Lake War Relocation Center.

That despite the existence of said regulations, said petitioner, Mitsuye Endo, at no time has made application [10] to the affiant, in his capacity as Project Director or otherwise, or to any of the members of his staff, for leave to depart from said Relocation Center under the terms of the said regulations.

That this affidavit is made for the purpose of advising the court of the facts surrounding the petitioner's status since the promulgation of said regulations.

(Sgd) ELMER L. SHIRRELL.

Subscribed and sworn to before me this 23rd day of November, 1942.

(Signed) [Seal] HELEN HALEY THOMAS.

Notary Public in and for the County of Modoc,
State of California.

My Commission Expires June 29, 1946.

[Endorsed]: Filed Jan. 7, 1943. [11]

[Title of District Court and Cause.]

AFFIDAVIT OF JAMES C. PURCELL

State of California,

City and County of San Francisco—ss.

James C. Purcell, being first duly sworn, deposes and says: That he is one of the attorneys for Mitsuye Endo; that Mitsuye Endo was and is a resident of the City of Sacramento, County of Sacramento, State of California; that she is now confined to that certain concentration camp known as Tule Lake War Relocation Center;

That there has been heretofore filed in the above entitled action an affidavit of Elmer L. Shirrell, setting forth that said Mitsuye Endo has failed to file her application for leave to depart from said Relocation Center; that your affiant is informed and believes and therefore alleges that said regulations make no provision for the return of said Mitsuye Endo to her place of residence, to wit, Sacramento, California, where she was heretofore employed as a Civil Service Employee of the State of California, and your affiant is further informed and believes and therefore alleges that to make application to return to said City of Sacramento, State of California, would be a useless act upon the part of Mitsuye Endo; [12]

That your affiant is informed and believes and therefore alleges that said Mitsuye Endo is confined in said concentration camp known as Tule Lake War Relocation Center against her will and has been and now is refused the right to return to

her place of residence where she was heretofore employed.

JAMES C. PURCELL

Subscribed and sworn to before me this 31st day of January, 1943.

[Seal]

WALTER E. McGUIRE,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Feb. 19, 1943: [13]

In the District Court of the United States in and for the Northern District of California, Southern Division

In the Matter of the Application of

mitsuye ENDO

For a Writ of Habeas Corpus

ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS

In the above-entitled cause it appearing upon the face of the petition that petitioner is not entitled to a writ of habeas corpus, and it further appearing that she has not exhausted her administrative remedies under the provisions of Executive Order No. 9102 (7 Fed. Reg. 2165) and the regulations promulgated thereunder.

It Is Therefore Ordered that the petition for

writ of habeas corpus be, and the same is, hereby denied.

Dated: July 2, 1943.

MICHAEL J. ROCHE,

United States District Judge.

[Endorsed]: Filed Jul. 2, 1943. [14]

In the District Court of the United States in
and for the Northern District of California,
Southern Division

In the Matter of the Application of

MITSUYE ENDO

For a Writ of Habeas Corpus

NOTICE OF APPEAL

To the Clerk of the said District Court and to Frank
J. Hennessy, Esq., United States Attorney for
the Northern District of California:

Notice Is Hereby Given that Mitsuye Endo, the
petitioner in the above-entitled cause, appeals to the
United States Circuit Court of Appeals for the
Ninth Circuit, from the judgment of the District
Court of the United States, in and for the North-
ern District of California, in the cause entitled as
above, denying the petition of said Mitsuye Endo
for a Writ of Habeas Corpus, which said judg-
ment was given and made in and by said District

Court the 2nd day of July, 1943, and which is in the words and figures following, to-wit:

"Order Denying Petition for Writ of Habeas Corpus.

In the above entitled cause, it appearing upon the face of the petition that petitioner is not entitled to a writ of habeas corpus, and it further appearing that she has not exhausted her administrative remedies under the provisions of Executive [15] Order #9102 (7 Fed. Reg. 2165) and the regulations promulgated thereunder.

It is therefore ordered that the petition for writ of habeas corpus be, and the same is hereby denied.

Dated July 2, 1943.

(Signed) MICHAEL J. ROCHE,

U. S. District Judge."

The said Mitsuye Endo appeals from the whole of said judgment.

Dated August 16, 1943.

MITSUYE ENDO,

Petitioner and Appellant.

JAMES C. PURCELL,

Attorney for Petitioner and Appellant.

[Endorsed] Filed Aug. 26, 1943. [16]

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF
RECORD ON APPEAL

To the Clerk of the Said District Court:

The above named appellant, Mitsuye Endo, has this day filed her notice of appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment of the said District Court, in the cause entitled as above, denying her petition for a Writ of Habeas Corpus, and does hereby designate as the portions of the record and proceedings and evidence to be contained in the record on said appeal the following, to wit:

1. The Petition for a Writ of Habeas Corpus;
2. The Affidavit of Elmer L. Shirrell;
3. The Affidavit of James C. Purcell;
4. The order of the Court dated July 2, 1943, denying the Writ of Habeas Corpus;
5. Notice of Appeal.

Dated this day of August, 1943.

JAMES C. PURCELL,

Attorney for Appellant.

Service admitted this 31st day of August, 1943.

FRANK J. HENNESSY,U. S. Attorney, Attorney for
Appellee.

[Endorsed]: Filed Aug. 31, 1943. [17]

[Title of District Court and Cause.]

STATEMENT OF POINTS ON APPEAL

The appellant has designated for inclusion in the Transcript on Appeal the complete record and proceedings in the above-entitled cause in said district; nevertheless, pursuant to the provisions of Subdivision D of Rule 75 of the Rules of Civil Procedure for the District Courts of the United States, appellant files this statement of the points on which she intends to rely on appeal:

(1) That your petitioner, being a citizen of the United States and not a member of the land or naval forces of the United States, is and was at the time of the filing of the petition herein imprisoned and restrained of her liberty in a certain concentration camp in the state and district aforesaid, by the War Relocation Authority in accordance with a certain purported order issued by J. L. De Witt, Lieutenant General of [18] the United States Army, commanding the military forces of the United States, within the State and District aforesaid; that there is neither insurrection nor invasion within the said State and District, and that all of the civil courts both State and Federal have at all times been and still are open for the transaction of judicial business, and at all times have been and now are performing all the powers and functions conferred upon them by the Constitution and the Laws of the United States of America, and are not and have been without interruption engaged in the trial of all causes, civil, criminal,

and maritime, that have or may properly come before them, and that juries, both grand and petty are now and at all times have been in attendance upon this court and upon all other courts of general jurisdiction both State and Federal in the State and District aforesaid; that appellant is an American citizen and has at all times borne full and true faith and allegiance to the United States of America; that no indictment or presentment has ever been returned or filed against appellant by the Grand Jurors of the United States of America in and for the District aforesaid, or elsewhere, that no complaint has ever been filed with any judge, commissioner, or other magistrate of the United States or of the State of California, charging appellant with any crime, and that by reason of all and singular the premises, appellant is unlawfully imprisoned and restrained of her liberty and is deprived of her liberty without due process of law; and that by the judgment of the said District Court, appellant has been denied the privilege of a writ of habeas corpus; all of which matters and things from the petition for a writ of habeas corpus and the affidavit on file herein fully and at large appear.

JAMES C. PURCELL,

Attorney for Appellant.

(Admission of Service.)

[Endorsed]: Filed Aug. 31, 1943. [19]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO DOCKET

Good cause appearing therefor, it is hereby Ordered that the Appellant may have to and including November 4, 1943, to file the Record on Appeal in the United States Circuit Court of Appeals in and for the Ninth Circuit.

Dated: September 25, 1943.

MICHAEL J. ROCHE,

United States District Judge.

[Endorsed]: Filed Sep. 25, 1943. [20]

District Court of the United States
Northern District of California

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 20 pages, numbered from 1 to 20, inclusive, contain a full, true, and correct transcript of the records and proceedings in the Matter of the Application of Mitsuye Endo, for a Writ of Habeas Corpus, No. 23688 S, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of Three Dollars and Fifty Cents

(\$3.50) and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 9th day of October, A. D. 1943.

[Seal]

C. W. CALBREATH,

Clerk.

By E. VAN BUREN,

Deputy Clerk.

[Endorsed]: No. 10605. United States Circuit Court of Appeals for the Ninth Circuit. Mitsuye Endo, Appellant, vs. Milton Eisenhower, Director of War Relocation Authority and Wartime Civilian Control Administration, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed November 5, 1943.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1944

No. 70

MITSUYE ENDO

vs.

MILTON EISENHOWER, Directors, etc.

ORDER TO CERTIFY ENTIRE RECORD—May 8, 1944

In accordance with section 239 of the Judicial Code (28 U. S. C., section 346), it is ordered that the entire record in this case be certified up to this Court so that the whole matter in controversy may be considered by the Court. The case is assigned for argument immediately following the hearing of No. 679.

(3221)